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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-198169

DATE: July 15, 1981

MATTER OF: Chief Warrant Officer Gordon D. Grampp, USN

DIGEST: Navy member who is indebted to United States because of simultaneous receipt of separate rations and basic allowance for subsistence, and whose request for waiver of the debt was denied because of partial fault on his part is not entitled to waiver on reconsideration since unfamiliarity with terminology does not provide a basis for waiver when a dual credit for subsistence was shown on his Leave and Earnings Statement.

Chief Warrant Officer Gordon D. Grampp, United States Navy, requests reconsideration of our decision of October 22, 1980, in which we sustained our Claims Division's denial of his application for waiver of the Government's claim against him in the amount of \$808.14. The claim arose from erroneous payments to Mr. Grampp of separate rations while he was concurrently receiving a basic allowance for subsistence as an officer.

Mr. Grampp is a permanent officer and thus entitled to receive a monthly basic allowance for subsistence; separate rations are paid at a daily rate to enlisted members only. 37 U.S.C. § 402 (1976). In our previous decision, we stated that the Navy Finance Center had determined Mr. Grampp to be at least partially at fault since the dual credit was shown on his Leave and Earnings Statements (LES), and he should have been aware of the excess payments. Mr. Grampp was held liable for the entire debt because, under our interpretation of 10 U.S.C. § 2774(b)(1976), a member is at fault when a reasonable person under the circumstances should have known that an error existed and brought the matter to the attention of the disbursing officer.

Mr. Grampp seeks reconsideration of our previous decision by presenting two additional arguments. First, he contends that the term "separate rations" was unknown to him and remains unfamiliar to Navy personnel generally. However, this does not change the fact that dual credits appeared on each LES received by Mr. Grampp which, upon

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inspection, should have been evidence sufficient to alert him to the dual payments. Regardless of his lack of comprehension of the official jargon, Mr. Grampp must be presumed to know that a member is entitled to only one subsistence allowance.

Secondly, Mr. Grampp argues that since he was found to be partially at fault, he should be only partially liable for the debt. We cannot agree. It has long been maintained by the courts and by this Office that persons who receive money erroneously paid by the Government acquire no right to the money and are bound in equity and good conscience to make restitution. See B-194029, October 22, 1979, and cases cited therein. The provisions of 10 U.S.C. § 2774 provide our authority to waive certain debts when collection would be against equity and good conscience and not in the best interests of the United States. However, subsection 2774(b) prohibits waiver if:

"* * * there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member* * *."

Whenever it is determined that a member should have known that an error existed, he is considered to be at least partially at fault. Such a determination precludes waiver entirely. See, Gary L. Way, B-186022, March 2, 1977.

Mr. Grampp also notes that in his correspondence with the Navy minor inconsistencies exist in the actual amount of the indebtedness, and as a result he should not be held responsible when the finance officials cannot agree on the amount. The data necessary to determine the exact amount of the debt is kept by the Navy Finance Center and that agency should be able to provide the debtor with an accurate computation and demonstrate its validity. However, the fact that the computations of the amount involved may have been inconsistent cannot alter the conclusion reached--that waiver is not appropriate in this case.

Accordingly, our decision of October 22, 1980, B-198169, is sustained.

Milton J. Aroslan

Acting Comptroller General
of the United States